| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/911,925 | 07/23/2001 | Ashar Aziz | 55218-0511 | 4906 |

| | | | EXAMINER |
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| 45657 | 7590 | 06/19/2006 | FELTEN, DANIEL S |

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| ART UNIT | PAPER NUMBER |
|---|---|
| 3624 | |

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | Application No. | Applicant(s) |
| **Office Action Summary** | 09/911,925 | AZIZ ET AL. |
| | Examiner | Art Unit | |
| | Daniel S. Felten | 3624 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>03 April 2006</u>.

2a)☐ This action is **FINAL**.     2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-9,11-27,29-36,39 and 41* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9, 11-27, 29-36, 39 and 41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

## DETAILED ACTION

1.      Receipt of the Request for Continued Examination ("RCE") filed April 03, 2006 is

acknowledged.  Claims 1-9, 11-27, 29-36, 39 and 41 are pending in the application and are

presented to be examined upon their merits.

### *Response to Arguments*

2.      In consideration of applicant's amendments to the claims, applicant's arguments with

respect to claims  1-9, 11-27, 29-36, 39 and 41  have been considered but are moot in view of the

new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

3.      The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.      Claims 1-9, 11-27, 29-36, 39 and 41   rejected under 35 U.S.C. 102(e) as being

anticipated by Peterson et al (US 7,020,628)

--As per claim 1, a computer-implemented method for determining an

amount to be billed to a customer for the use of *computing* resources, the method comprising:

determining usage data that indicates usage, *by the customer* during a specified period

of time, of a set of one or more *computing* resources assigned *exclusively* to the customer,

wherein over time, *computing* resources may be de-allocated from the set of one or more

computing resources assigned *exclusively* to the customer and additional *computing* resources may be allocated to the set of one or more *commuting* resources assigned exclusively to the customer from a plurality of *computing* resources; and in a computer system determining the amount to be billed to the customer based upon the usage data and value data *wherein, the value data* that specifies a number of service units that each *computing* resource from the set of one or more *computing* resources is capable of providing per unit time (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line3).

--As per claim 2, wherein: the usage data indicates usage, during the specified period of time, of each computing resource from the set of one or more computing resources, and the step of determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based upon the usage of each computing resource from the set of one or more computing resources during the specified period of time and the value data (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line3; col. 4, lines 21+).

--As per claim 3, the usage data specifies, for each computing resource from the set of one or more computing resources, an amount of time that each computing resource was used during the specified period of time, and the step of determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based the amount of time that each computing resource was used during the specified period of time (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line3).

--As per claim 4, determining the amount to be billed to the customer based upon the number of service units that each computing resource is capable of providing per unit time and the amount of time that each computing resource was used during the specified period of time includes determining the amount to be billed to the customer based upon the number of service units that each computing resource is capable of providing per unit time, the amount of time that each computing resource was used during the specified period of time and an amount to be charged per service unit (see col. 4, lines 1-20).

--As per claim 5, determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based upon the usage data, the value data and a reservation fee for reserving the set of one or more computing resources (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

--As per claim 6, the reservation fee includes a fee for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer ( see col. 4, lines 47+).

--As per claim 7, the method further comprises determining additional usage data that indicates usage, by the customer during the specified period of time, of one or more additional computing resources from the plurality of computing resources, and the step of determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based upon the usage data, the value data, the additional usage data and additional value data wherein the value data that specifies a number

of service limits that each of the one or more additional computing resources is capable of providing per unit time (see col. 4, lines 1+).

--As per claim 8, the set of one or more computing resources comprise an initial computing resource configuration (see col. 2, line 45 to col. 3, line 31).

As per claim 9, the set of one or more computing resources comprise a virtual server farm (see col. 2, line 45 to col. 3, line 31).

As per claim 11, one or more computing resources includes one or more processors (30)(network access server--NAS) (see col. 2, lines 18-44).

As per claim 12, the plurality of commuting resources includes one or more storage resources (37)(enterprise service system--ESS) (see col. 2, lines 45 to col. 3, line 3)

As per claim 13, the one or more storage resources include one or more volatile storage devices (37)(enterprise service system--ESS) (see col. 2, lines 45 to col. 3, line 3)

As per claim 14, the one or more storage resources include one or more non-volatile storage resources (37)(enterprise service system--ESS) (see col. 2, lines 45 to col. 3, line 3)

As per claim 15, where in the one or more non-volatile storage resources include one or more disks.(see col. 2, lines 14+)

As per claim 16, the wherein the plurality of computing resources includes one or more computer software resources (see col. 2, lines 45 to col. 3, line 3)

As per claim 17, the plurality of computing resources includes one or more communications link resources (see LAN, col. 18+).

As per claim 18. the one or more communications link resources includes one or more Internet connections (see LAN, col. 18+),

As per claim 19. A computer-readable medium carrying instructions for determining an amount to bill a customer for the use of computing resources, the instructions-including instructions which, when executed by one or more processors in a computer-system, cause:

determining usage data that indicates usage, by the customer during a specified period of time, of a set of one or more computing resources assigned exclusively to the customer, wherein over time, computing resources may be de-allocated from the set of one or more computing resources assigned exclusively to the customer and additional computing resources may be allocated to the set of one or more computing resources assigned exclusively to the customer from a plurality of commuting resources; and determining the amount to be billed to the customer based upon the usage data and value data wherein the value that specifies a number of service units that each computing resources from the set of one or more computing resources is capable of providing per unit time (see col. 3, line 32+).


As per claim 20, The computer-readable medium as recited wherein: the usage data indicates usage, during the specified period of time, of each computing resource from the set of one or more computing resources, and the step of determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based upon the usage of each computing resource from the set of one or more Computing resources during the specified period of time and the value data (see card 14, col. 3, line 32+)

As per claim 21, the usage data specifies, for each computing resource from the set of one or more Computing resources, an amount of time that each computing resource was used during the specified period of time, and the step of determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based upon the amount of time that each computing resource was used during the specified period of time (see col. 3, line 32+).

As per claim 22, determining the amount to be billed to the customer based upon the number of service units that each computing resource is capable of providing per unit time and the amount of time that each computing resource was used during the specified period of time includes determining the amount to be billed to the customer based upon the number of service units that each computing resource is capable of providing per unit time, the amount of time that each computing resource was used during the specified period of time and an amount to be charged per service unit.

As per claim 23, determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based upon the usage data, the value data and a reservation fee for reserving the set of one or more Computing resources (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 24, the reservation fee includes a fee for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer(see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 25, the computer-readable medium includes one or more additional instructions which, when executed by the one or more processors, cause the one or more processors to perform the step of determining additional usage data that indicates usage, by the customer during the specified period of time, of one or more additional computing resources from the plurality of computing resources, and the step of determining the amount to be billed to the customer based upon the usage data and value data includes determining the amount to be billed to the customer based upon the usage data, the value data, the additional usage data and additional value data wherein the value data that specifies a number of service limits that each of the one or more additional computing resources is capable of providing per unit time (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 26, wherein the set of one or more computing resources comprise an initial computing resource configuration (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 27, wherein the set of one or more computing resources comprise a virtual server farm  (see col. 2, line 45 to col. 3, line 31).

As per claim 29,  one or more computing resources includes one or more (30)(network access server--NAS) (see col. 2, lines 18-44).

As per claim 30, the plurality of computing resources includes one or more storage resources 37)(enterprise service system--ESS) (see col. 2, lines 45 to col. 3, line 3)

As per claim 31, wherein the one or more storage resources include one or more volatile storage devices (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 32, wherein the one or more storage resources include one or more non-volatile storage resources (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 33, where in the one or more non-volatile storage resources include one or more disks (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 34, wherein the plurality of computing resources includes one or more computer software  resources (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 35, wherein the plurality of computing resources includes one or more communications link (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As per claim 36, wherein the one or more communications link resources includes one or more Internet connections (see LAN, col. 18+).

As per claim 39,  A billing apparatus for determining an amount to bill

a customer comprising:

a memory configured to store usage data and value data, wherein the usage data indicates usage, by the customer during a specified period of time, of a set of one or more commuting resources assigned exclusively to the customer, wherein over time, computing resources may be

de-allocated from the set of one or more computing resources assigned exclusively to the customer and additional commuting resources may be allocated to the set of one or more computing-resources assigned exclusively to the customer from a plurality of computing resources and wherein the value data specifies a number of service units that each computing resource from the set of one or more computing resources is capable of providing per unit time; and a billing mechanism communicatively coupled to the memory and configured to determine the amount to bill to the customer based upon both the usage data and the value data (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

As in claim 41, memory configured to store the usage data and the value data (see Peterson , abstract, col. 1, lines 56 to col. 2, line 17; col. 2, line 45 to col. 3, line 3).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daniel S Felten
Examiner
Art Unit 3624

DSF
June 09, 2006